

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CARLOS LINDSEY,
Plaintiff,

v.

Case No. 18-C-0323

C.O. JOHNSTON et al.,
Defendants.

ORDER

Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The total cost of filing a civil action is \$400.00, which includes the \$350.00 statutory filing fee and a \$50.00 administrative fee. However, the \$50.00 administrative fee does not apply to persons granted in forma pauperis status.

Pursuant to the Prison Litigation Reform Act ("PLRA"), a prisoner is required to pay the statutory filing fee of \$350.00 for any civil action, even when in forma pauperis status is granted. See 28 U.S.C. § 1915(b)(1); *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997), *overruled on other grounds by Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). However, a plaintiff prisoner is allowed to pay the filing fee in increments according to the formula set forth in § 1915(b)(1). Under this provision, the court will assess an initial partial filing fee of twenty percent of the greater of: (1) the average monthly deposits into the plaintiff's prison account; or (2) the average monthly balance in the plaintiff's prison account, each for the six-month period immediately preceding the filing of the complaint. After the initial fee is paid, the agency having custody of the plaintiff captures twenty percent of the income deposited into the plaintiff's trust account

each month. Once the accumulated twenty percent deductions exceed \$10.00, prison officials shall forward the accumulated deductions to the Clerk of Court toward the plaintiff's filing fee. *Williams v. Litscher*, 115 F. Supp. 2d 989, 991 (W.D. Wis. 2000).

The clerk's office has received a certified copy of plaintiff's prison trust account statement for the past six months. A review of this statement reveals that the average monthly deposit into plaintiff's prison account was \$3.87 and the average monthly balance was zero. Thus, in accordance with § 1915(b)(1), plaintiff is required to pay an initial partial filing fee of \$0.77 (twenty percent of \$3.87).

Plaintiff shall pay this initial partial filing fee of \$0.77 to the clerk of this court within 21 days of the date of this order. Failure to pay the initial partial filing fee within the time specified will result in dismissal of this action, pursuant to Fed. R. Civ. P. 41(b) and Civil L.R. 41(c) (E.D. Wis. 2010).

The PLRA also provides that if a prisoner files more than three actions or appeals which are dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other actions in forma pauperis, unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that his action is later dismissed for any of the above reasons, it will have an impact on the prisoner's ability to bring other actions in forma pauperis. This analysis of the complaint is not undertaken by the court until after the initial partial filing fee is paid. Accordingly, the plaintiff will be afforded an opportunity to voluntarily dismiss this action to avoid incurring a "strike" under § 1915(g).

Notice to Plaintiff: If you do not wish to pay the filing fee as set forth in this Order or do not wish to proceed with this action to avoid incurring a "strike" under

§ 1915(g), you must notify the court by filing a letter with the Clerk of Court within 21 days of the date of this order stating that you do not wish to prosecute this civil action. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a “strike” under § 1915(g).

THEREFORE, IT IS ORDERED that within 21 days of the date of this order, the plaintiff shall forward to the Clerk of Court the sum of \$0.77 as an initial partial filing fee in this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed in forma pauperis. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet this standard, the action will be dismissed.

IT IS ALSO ORDERED that a copy of this order be sent to the warden of the institution where the inmate is confined

Dated at Milwaukee, Wisconsin this 9th day of March, 2018.

s/Lynn Adelman_____
LYNN ADELMAN
District Judge